Supreme Court, U.S.
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No. 03-245

IN THE
Supreme Court of the United States

DALE R. DEROLPH, ET AL.,
Petitioners,

v.

THE STATE EX REL.
STATE OF OHIO
Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF AMICI CURIAE SOUTH CAROLINA SCHOOL DISTRICTS, TAXPAYERS, AND CHILDREN IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICI[1]

Amici are South Carolina school districts, taxpayers, and children currently bringing suit against the State of South Carolina, the Governor of South Carolina, and representatives of the South Carolina Senate and House of Representatives [hereinafter collectively referred to as "South Carolina Defendants"] for failing to provide the opportunity for each child to receive a minimally adequate education, as required by the South Carolina Constitution.[2]

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[1] The Amici file this brief with the consent of all parties. No counsel for a party authored this brief in whole or in part. No person or entity, other than the Amici, their members, or their counsel, made a monetary contribution for the preparation or submission of this brief.

[2] The South Carolina case, Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney Vincent; Courtney Vincent, a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Waylon Priester; Waylon Priester, a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler Bagley; Tyler Bagley, a minor, by and

through Betty Bagley, as Guardian ad Litem; Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly Comer; Kimberly Comer, a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County and as a parent and Guardian ad Litem of Eleanor Jameson; Eleanor Jameson, a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., ndividually, and as a taxpayer residing in Barnwell County and as parent and Guardian ad Litem of Christie Lancaster; Christie Lancaster, a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County and as parent and Guardian ad Litem of Candace Clark; Candace Clark, a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County and as parent and Guardian ad Litem of Corrie Coke; Corrie Coker, a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha Williams; Katisha Williams, a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon Fullard; Brandon Fullard, a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as parent and Guardian ad Litem of Joel Whiteside, Joel Whiteside, a minor, by and through John Whiteside, as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton county and as parent and Guardian ad Litem of Amy Mills; Amy Mills, a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin Brooks; Tyrin Brooks, a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan Tigner and Bradley Tigner; Bryan Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Bradley Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. Short; Robert B. Short, a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson Bridges; Jorgana Ranson Bridges, a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer

Similar to the Petitioners in the case before this Court, Dale R. DeRolph, et al. v. The State ex rel. State of Ohio, the South Carolina school districts have fought for approximately a decade to provide their children with the opportunity to break free from poverty and ignorance by allocating adequate funding to education. The South Carolina school districts are presently in trial, where they are

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residing in Lee County and as parent and Guardian ad Litem of Rashade Harriott; Rashade Harriott, a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly Wise; Kimberly Wise, a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin Nobles; Erin Nobles, a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle Hampton; Krystle Hampton, a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell Hezekiah; Russell Hezekiah, a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. Brown; Tanisha P. Brown, a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea Berry; Dondrea Berry, a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda Smith; Brenda Smith, a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas Shealy, Jr.; Thomas Shealy, Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem, vs. The State of South Carolina; Mark C. Sanford, as Governor of the State of South Carolina; Warren K. Giese, as Chairman of the Senate Education Committee and Chairman of the Senate Finance Committee, in his representative capacity as a properly designated representative of the South Carolina Senate; David H. Wilkins, as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives, Civil Action 93-CP-31-169, is pending in the Court of Common Pleas for Lee County, South Carolina.

presenting evidence of budget cuts to the schools despite overcrowding, poorly maintained buildings, under qualified teachers, and inadequate teaching materials. Without guidance from this Court, the children in poor and rural school districts in South Carolina may never have the chance to break free from the current cycle of ignorance, poverty, and despair.

In submitting this brief, Amici wish to call attention to law and arguments that may assist the Court and to call attention to the broad implications of the issues raised by the petition for writ of certiorari submitted by the DeRolph Petitioners. At stake is the distinct likelihood that litigants and school children in other states involved in similar litigation may also have remedies foreclosed to them, as seen in Ohio, in violation of the Due Process and Equal Protection Clauses of the United States Constitution.

The State of South Carolina has consistently neglected to fulfill its state constitutional obligations to local school districts by forcing them to find necessary funding to accomplish the State's educational obligations. The local revenue generated for education is primarily derived from local property taxes so that those districts with greater property values naturally enjoy greater revenue. The school districts comprising the Amici are poor, rural districts that have a disproportionate number of pupils living in poverty. These disadvantaged pupils have consistently performed below the educational level expected and required by the State of South Carolina.

Furthermore, these school districts do not have the fiscal capacities to fund the necessary educational programs and mandates to meet the needs of these disadvantaged students, and the State does not sufficiently take poverty or other educational disadvantages into consideration when allocating education funds among all the districts. State

funding for education in South Carolina is accomplished primarily through mechanisms under the Education Finance Act (EFA), S.C. Code §§ 59-20-10 to 80 (Law. Co-op. 1990 & Supp. 1998), and the Education Improvement Act (EIA), S.C. Code §§ 59-21-420 to 450 (Law. Co-op. 1990 & Supp. 1998). The EFA provides the foundation for funding and utilizes a weighting system intended to distribute funding equitably among the eighty-five school districts in South Carolina based on the individual district's local property tax base. South Carolina has failed to fully fund its part of this program 21 times in the past 29 years. As such, these school districts must increasingly rely on meager local and federal funds to meet the most basic educational needs.

Amici initially brought a declaratory judgment action in November 1993 challenging the State of South Carolina's funding of public primary and secondary education and seeking to reform education finance in South Carolina to achieve a more effective means of providing its pupils with the opportunity for a level of education guaranteed by the South Carolina Constitution. Amici alleged violations of the South Carolina Constitution's education clause (art. XI, § 3),[3] the state and federal equal protection clauses, and a violation of the EFA.

South Carolina Defendants moved to dismiss on the grounds that the Complaint failed to state a cause of action, and the trial court granted that motion in 1995. Amici appealed that ruling to the South Carolina Supreme Court. In 1999, the South Carolina Supreme Court issued an opinion reversing the trial court's ruling regarding the South

[3] This section of the South Carolina Constitution is entitled "System of free public schools and other public institutions" and provides: "The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable." S.C. Const. art. XI, § 3.

Carolina Constitution's education clause and affirming the remainder of the trial court's ruling. See Abbeville County School District v. South Carolina, 515 S.E.2d 535 (S.C. 1999). The South Carolina Supreme Court stated:

> We hold today that the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education. . . . We define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire: (1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; (2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and (3) academic and vocational skills. . . . [W]e have defined, within deliberately broad parameters, the outlines of the constitution's requirement of minimally adequate education.

Id. at 540-41.

The state supreme court remanded for further proceedings, and a bench trial is currently ongoing. In that trial, Amici seek a declaratory judgment that the State of South Carolina has failed and is continuing to fail to provide students in the plaintiff school districts with an opportunity to receive a minimally adequate education, as defined in the Abbeville County decision. Specifically, Amici are requesting that the trial court provide guidance to the South Carolina Legislature by requiring a baseline system of investigation and accountability that is necessary to remedy

the present failure to comply with the constitutional standard. In particular, the plaintiff school districts are requesting that the State of South Carolina should be required to: (1) conduct a "costing out" study to determine the actual cost of providing a minimally adequate education; (2) utilize the results of the costing out study to ensure that each school in the plaintiff school districts has adequate resources to provide the opportunity for a minimally adequate education to each child; and (3) establish a system of accountability to measure whether the reforms devised by the legislature actually provide and maintain the opportunity to obtain a minimally adequate education in the plaintiff school districts. Additionally, the Amici are asking the trial court to set a timetable for compliance with the constitutional mandate and reserve jurisdiction to take further action if the remedies imposed are not effected by that date.

The South Carolina Defendants have filed a motion to dismiss the requested remedies on the grounds that the court does not have the authority to do more than declare the constitutionality of the state education statute.[4] In other words, the South Carolina Defendants are seeking to restrict the court's role to merely declaring a right, thereby prohibiting the court from providing any remedy for the violation of that right.

Accordingly, the case before this Court can have a direct effect on the children of South Carolina in the Abbeville County case because the South Carolina trial judge is currently considering a similar issue with very little guidance in the way of precedent in this state. This issue is novel to South Carolina, and other courts across the country are split in their decisions. Without direct guidance from this Court, the immediate losers are the children of South Carolina, who may well be forced to a lifetime of poverty

[4] This motion is currently pending before the trial court.

and ignorance as the South Carolina school districts continue to wage their ten-year legal battle for educational funding and the case languishes in the courts.

SUMMARY OF ARGUMENT

Due Process requires that state courts protect state constitutional rights by remedying them. The failure to do so violates litigants' federal constitutional rights. Certiorari should be granted in this case to ensure that the scope of judicial power, when faced with remedying a state constitutional violation, is not so eroded.

ARGUMENT

State courts across the United States, facing state constitutional challenges to their respective public school funding systems, continue to grapple with the extent to which they may remedy such state constitutional violations. In so doing, these courts are forced to balance their duty to uphold and enforce the state constitution with the restraint required not to impede upon the province of the legislative branch. However, when the balance tips too far in favor of restraint and, as a result, affirmative state constitutional rights -- such as the right to an adequate education -- go unfulfilled and unenforced, due process and equal protection violations can and do occur.

Such is the case in DeRolph, in which the Petitioners have been left without any remedy for a state constitutional violation despite the Ohio Supreme Court's own rulings that Ohio's current educational system is unconstitutional. The Petitioners' predicament raises concerns that a trial court ruling in favor of the Amici in their own trial could ultimately be hollow.

Due process requires that rights guaranteed by state constitutions be enforced, particularly when those constitutions create an affirmative duty upon the state, such as providing an adequate education. When such rights are denied, the courts must provide a remedy. As the Washington Supreme Court in the education funding case of Seattle Sch. Dist. No. 1 v. Washington aptly stated: "Just as the Legislature cannot abridge constitutional rights by its enactments, it cannot curtail mandatory provisions by its silence. The judicial obligation to protect constitutionally declared fundamental rights of individuals is as old as the United States." 585 P.2d 71, 87 n. 7 (Wash. 1978) (citing Marbury v. Madison, 5 U.S (1 Cranch) 137, 163 (1893)). The Ohio Supreme Court has failed its judicial obligation by holding Ohio's educational system unconstitutional, setting forth remedies, and then eviscerating those remedies by denying access to its courts to enforce those remedies in the face of the state's continued failure to meet its affirmative, state constitutional duties.

When a question was raised about judicial authority to mandate the reform of state electoral systems, this Court, in Reynolds v. Sims, 377 U.S. 533 (1964), stated:

> We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. **Our answer is this: a denial of constitutionally protected rights demands judicial**

protection; our oath and our office require no less of us.

Id. at 566 (emphasis added). No less is required of state courts when called upon to remedy the denial of judicially recognized rights protected and guaranteed by their respective state constitutions. The failure to meet that obligation and provide access to the courts to enforce such rights violates the Due Process and Equal Protection Clauses of the United States Constitution. This Court should grant the petition for writ of certiorari submitted by the plaintiffs in DeRolph to ensure that these principles are upheld in Ohio, as well as the rest of the United States.

This Court has previously found certiorari to be warranted in a comparable scenario. After this Court decided Brown v. Board of Education, 349 U.S. 294 (1955) ("Brown II"), courts across the country were mandated to implement a remedy to a constitutional violation in the face of local authorities' failure to desegregate schools. This Court then granted certiorari in numerous cases to clarify the scope of judicial power when faced with the directive of curing a constitutional violation. See, e.g., Swann v. Mecklenburg, 402 U.S. 1 (1971). A circumstance analogous to that following this Court's decision in Brown II is currently unfolding nationally with respect to state constitutional rights, and the instant petition exemplifies that circumstance.

The Ohio legislature has, as have many legislatures across the country, demonstrated an unwillingness to remedy the clearly outlined state constitutional violation of failing to provide an adequate education. The Ohio Supreme Court, in contravention of its own rulings, has enabled such inaction on the part of the legislature. If that decision is allowed to stand, such circumstances risk repeating in South Carolina and throughout the country resulting in the denial of the

guaranteed right of an adequate education. Amici, in their South Carolina action, seek similar remedies as those obtained by Petitioners and fear, if successful in establishing the unconstitutionality of South Carolina's educational system, the same fate of having such remedies foreclosed from them in violation of due process and equal protection.

The unsuccessful implementation of remedies following Brown II compelled this Court in Mecklenberg to grant certiorari because:

> The problems encountered by the district courts and courts of appeals make plain that we should now try to amplify guidelines, however incomplete and imperfect, for the assistance of school authorities and courts. The failure of local authorities to meet their constitutional obligations aggravated the massive problem of converting from the state-enforced discrimination of racially separate schools.

402 U.S. at 14. Significantly, this Court found that "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." Id. at 15-16. The Court then established comprehensive, issue-specific guidelines and mandates, explicitly instructing district courts to retain jurisdiction when necessary "to assure that these responsibilities are carried out." Id. at 21.

Such assurances are now required with respect to education funding cases across the country to ensure that federally protected due process and equal protection rights are not trampled upon. Courts should not be permitted to

avoid their judicial obligations in the face of state constitutional violations by either providing no remedy or, as is the case in Ohio, denying access for enforcement of that remedy. When states fail to fulfill their affirmative duty of providing an adequate education and courts allow that failure to perpetuate, children are stranded in education systems that fail to provide the minimal level of education guaranteed to them by their state's constitutions. The damage from such circumstances is irreparable and continuing.

Ohio's children have been deprived of a guaranteed, state constitutional right as well as the means to remedy that deprivation, and therefore federal due process and equal protection are squarely implicated. The issues raised by the present petition for writ of certiorari require this Court's intervention to preserve federal due process and equal protection rights in the same manner that such intervention was demanded by this country's efforts to desegregate its schools. Amici request that this Court grant the petition for writ of certiorari to protect the due process and equal protection rights of all litigants facing the likelihood of courts foreclosing remedies despite declared, state constitutional violations as was done in Ohio.

CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court accept this brief and grant the petition for writ of certiorari.

Respectfully submitted,

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